

Introduced by Senator Lara

February 6, 2017

An act to add Chapter 2 (commencing with Section 1798.785) to Title 1.8 of Part 4 of Division 3 of the Civil Code, and to amend Sections 12800.7 and 12801.9 of the Vehicle Code, relating to privacy.

LEGISLATIVE COUNSEL'S DIGEST

SB 244, as introduced, Lara. Privacy: agencies: personal information.

(1) The Information Practices Act of 1977 requires an agency to maintain in its records only that personal information, as defined, that is relevant and necessary to accomplish a purpose of the agency required or authorized by the California Constitution or statute or mandated by the federal government, as provided. The act defines "agency" for these purposes as every state office, officer, department, division, bureau, board, commission, or other state agency, but excluding the Legislature, judicial branch entities, the State Compensation Insurance Fund, except as provided, and local agencies.

This bill would require that personal information, as defined, and records containing personal information that are collected or obtained by the state, any state agency, or any subdivision of the state, including agents of the California State University and the California Community Colleges, as well as any private persons contracted to administer public services or programs, from an applicant for public services or programs only be collected, used, and retained for the purpose of assessing eligibility for and providing those public services and programs for which the application has been submitted. The bill would provide that personal information subject to these provisions is not a public record for purposes of the California Public Records Act and would prohibit

disclosure of that personal information to any other person, except as provided.

By imposing new duties on local officials with respect to collecting, maintaining, and disclosing personal information, this bill would impose a state-mandated local program.

(2) Existing law requires that each application for an original or a renewal of a driver's license contain specified information. Under existing law, any document provided by the applicant to the department for purposes of proving his or her identity, true, full name, California residency, or that the applicant's presence in the United States is authorized under federal law, is not a public record and prohibits the department from disclosing this information except when requested by a law enforcement agency as part of an investigation.

This bill would instead prohibit the department from disclosing this information except in response to a warrant issued by a state or federal court in an individual criminal prosecution.

(3) Existing law requires the Department of Motor Vehicles to issue an original driver's license to a person who is unable to submit satisfactory proof that the applicant's presence in the United States is authorized under federal law if he or she meets all other qualifications for licensure and provides satisfactory proof to the department of his or her identity and California residency. Under existing law, it is a violation of specified antidiscrimination provisions for a state or local governmental authority, agent, or person acting on behalf of a state or local governmental authority, or a program or activity that is funded directly or receives financial assistance from the state, to discriminate against an individual because he or she holds or presents a license issued pursuant to these provisions.

This bill would specify that discrimination for these purposes includes notifying another law enforcement agency of the individual's identity or that the individual carries a license issued under these provisions if a notification would not otherwise be provided.

Existing law specifies that information collected under this provision is not a public record and prohibits disclosure, except as required by law.

This bill would instead prohibit disclosure except in response to a warrant issued by a state or federal court in an individual criminal prosecution.

Existing law prohibits use of a driver's license issued under these provisions to consider an individual's citizenship or immigration status as a basis for an investigation, arrest, citation, or detention.

This bill would instead prohibit use of a driver's license issued under these provisions as evidence of or a basis to infer an individual's citizenship or immigration status as a basis for any purpose.

(4) Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

(5) The California Constitution requires local agencies, for the purpose of ensuring public access to the meetings of public bodies and the writings of public officials and agencies, to comply with a statutory enactment that amends or enacts laws relating to public records or open meetings and contains findings demonstrating that the enactment furthers the constitutional requirements relating to this purpose.

This bill would make legislative findings to that effect.

(6) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Chapter 2 (commencing with Section 1798.785)
2 is added to Title 1.8 of Part 4 of Division 3 of the Civil Code, to
3 read:
4
5 CHAPTER 2. APPLICATIONS FOR PUBLIC SERVICES OR PROGRAMS
6
7 1798.785. (a) Notwithstanding any other law, personal
8 information and records containing personal information that are
9 collected or obtained by the state, any state agency, or any
10 subdivision of the state, including agents of the California State
11 University and the California Community Colleges, as well as any

1 private persons contracted to administer public services or
2 programs, from an applicant for public services or programs shall
3 only be collected, used, and retained for the purpose of assessing
4 eligibility for and providing those public services and programs
5 for which the application has been submitted. Personal information
6 subject to this section is not a public record for purposes of the
7 California Public Records Act (Chapter 3.5 (commencing with
8 Section 6250) of Division 7 of Title 1 of the Government Code)
9 and shall not be disclosed to any other person, including, but not
10 limited to, any other state or federal agency or official, except as
11 follows:

12 (1) If disclosure is required to administer the requested public
13 services or programs.

14 (2) If disclosure is otherwise required by law.

15 (3) If the disclosure is pursuant to a state or federal court order.

16 (4) If the disclosure is made as provided in subdivision (c) or
17 (d).

18 (b) As used in this section, the following definitions shall apply:

19 (1) "Personal information" means any of the following:

20 (A) Name.

21 (B) Residential, business, or other address.

22 (C) Date and place of birth.

23 (D) Religion.

24 (E) Sex, sexual orientation, gender, and gender identity.

25 (F) Marital status.

26 (G) Age.

27 (H) Citizenship or immigration status.

28 (I) Social Security number, issued by the Social Security
29 Administration, or individual taxpayer identification number,
30 issued by the Internal Revenue Service.

31 (J) Records of criminal or juvenile arrests, convictions, or
32 adjudications.

33 (K) Status as a victim of crime.

34 (L) Known or suspected political or organizational affiliations.

35 (M) Status as a recipient of public services or programs.

36 (N) Health information.

37 (O) Income, assets, and debt.

38 (P) Credit information of the applicant for public services or
39 programs and any family members or other individuals whose
40 names are provided in support of the application.

1 (2) “Applicant for public services or programs” means any
2 person who applies for, receives, or uses any government service
3 or benefit on his or her own behalf or on behalf of a dependent.

4 (3) “Public services or programs” includes, but is not limited
5 to, veterans’ services, job training, education, financial aid, health
6 care, unemployment benefits, income assistance, nutrition
7 assistance, housing, counseling, law enforcement assistance, library
8 access, identification cards, driver’s licenses, professional or
9 business licenses, and court services that are provided by a state
10 or local public entity.

11 (c) This section shall not prohibit the sharing of aggregate data,
12 provided that any personal information is redacted or removed.

13 (d) This section shall not prohibit the sharing of personal
14 information in response to a request from the applicant for public
15 services or programs upon receipt of a signed consent form.

16 SEC. 2. Section 12800.7 of the Vehicle Code is amended to
17 read:

18 12800.7. (a) Upon application for an original or duplicate
19 license the department may require the applicant to produce any
20 identification that it determines is necessary in order to ensure that
21 the name of the applicant stated in the application is his or her true,
22 full name and that his or her residence address as set forth in the
23 application is his or her true residence address.

24 (b) Notwithstanding any other law, any document provided by
25 the applicant to the department for purposes of proving his or her
26 identity, true, full name, California residency, or that the applicant’s
27 presence in the United States is authorized under federal law, is
28 not a public record and may not be disclosed by the department
29 except ~~when requested by a law enforcement agency as part of an~~
30 ~~investigation.~~ *in response to a warrant issued by a state or federal*
31 *court in an individual criminal prosecution.*

32 SEC. 3. Section 12801.9 of the Vehicle Code is amended to
33 read:

34 12801.9. (a) Notwithstanding Section 12801.5, the department
35 shall issue an original driver’s license to a person who is unable
36 to submit satisfactory proof that the applicant’s presence in the
37 United States is authorized under federal law if he or she meets
38 all other qualifications for licensure and provides satisfactory proof
39 to the department of his or her identity and California residency.

(b) The department shall adopt emergency regulations to carry out the purposes of this section, including, but not limited to, procedures for (1) identifying documents acceptable for the purposes of proving identity and California residency, (2) procedures for verifying the authenticity of the documents, (3) issuance of a temporary license pending verification of any document's authenticity, and (4) hearings to appeal a denial of a license or temporary license.

(c) Emergency regulations adopted for purposes of establishing the documents acceptable to prove identity and residency pursuant to subdivision (b) shall be promulgated by the department in consultation with appropriate interested parties, in accordance with the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code), including law enforcement representatives, immigrant rights representatives, labor representatives, and other stakeholders, which may include, but are not limited to, the Department of the California Highway Patrol, the California State Sheriffs' Association, and the California Police Chiefs Association. The department shall accept various types of documentation for this purpose, including, but not limited to, the following documents:

(1) A valid, unexpired consular identification document issued by a consulate from the applicant's country of citizenship, or a valid, unexpired passport from the applicant's country of citizenship.

(2) An original birth certificate, or other proof of age, as designated by the department.

(3) A home utility bill, lease or rental agreement, or other proof of California residence, as designated by the department.

(4) The following documents, which, if in a language other than English, shall be accompanied by a certified translation or an affidavit of translation into English:

(A) A marriage license or divorce certificate.

(B) A foreign federal electoral photo card issued on or after January 1, 1991.

(C) A foreign driver's license.

(5) A United States Department of Homeland Security Form I-589, Application for Asylum and for Withholding of Removal.

(6) An official school or college transcript that includes the applicant's date of birth, or a foreign school record that is sealed

1 and includes a photograph of the applicant at the age the record
2 was issued.

3 (7) A United States Department of Homeland Security Form
4 I-20 or Form DS-2019.

5 (8) A deed or title to real property.

6 (9) A property tax bill or statement issued within the previous
7 12 months.

8 (10) An income tax return.

9 (d) (1) A license issued pursuant to this section, including a
10 temporary license issued pursuant to Section 12506, shall include
11 a recognizable feature on the front of the card, such as the letters
12 “DP” instead of, and in the same font size as, the letters “DL,”
13 with no other distinguishable feature.

14 (2) The license shall bear the following notice: “This card is
15 not acceptable for official federal purposes. This license is issued
16 only as a license to drive a motor vehicle. It does not establish
17 eligibility for employment, voter registration, or public benefits.”

18 (3) The notice described in paragraph (2) shall be in lieu of the
19 notice provided in Section 12800.5.

20 (e) If the United States Department of Homeland Security
21 determines a license issued pursuant to this section does not satisfy
22 the requirements of Section 37.71 of Title 6 of the Code of Federal
23 Regulations, adopted pursuant to paragraph (11) of subdivision
24 (d) of Section 202 of the Real ID Act of 2005 (Public Law 109-13),
25 the department shall modify the license only to the extent necessary
26 to satisfy the requirements of that section.

27 (f) Notwithstanding Section 40300 or any other law, a peace
28 officer shall not detain or arrest a person solely on the belief that
29 the person is an unlicensed driver, unless the officer has reasonable
30 cause to believe the person driving is under 16 years of age.

31 (g) The inability to obtain a driver’s license pursuant to this
32 section does not abrogate or diminish in any respect the legal
33 requirement of every driver in this state to obey the motor vehicle
34 laws of this state, including laws with respect to licensing, motor
35 vehicle registration, and financial responsibility.

36 (h) It is a violation of law to discriminate against a person
37 because he or she holds or presents a license issued under this
38 section, including, but not limited to, the following:

39 (1) It is a violation of the Unruh Civil Rights Act (Section 51
40 of the Civil Code), for a business establishment to discriminate

1 against a person because he or she holds or presents a license issued
2 under this section.

3 (2) (A) It is a violation of the California Fair Employment and
4 Housing Act (Part 2.8 (commencing with Section 12900) of
5 Division 3 of Title 2 of the Government Code) for an employer or
6 other covered person or entity, pursuant to Section 12940 of the
7 Government Code and subdivision (v) of Section 12926 of the
8 Government Code, to discriminate against a person because the
9 person holds or presents a driver's license issued pursuant to this
10 section, or for an employer or other covered entity to require a
11 person to present a driver's license, unless possessing a driver's
12 license is required by law or is required by the employer and the
13 employer's requirement is otherwise permitted by law. This section
14 shall not be construed to limit or expand an employer's authority
15 to require a person to possess a driver's license.

16 (B) Notwithstanding subparagraph (A), this section shall not
17 be construed to alter an employer's rights or obligations under
18 Section 1324a of Title 8 of the United States Code regarding
19 obtaining documentation evidencing identity and authorization for
20 employment. An action taken by an employer that is required by
21 the federal Immigration and Nationality Act (8 U.S.C. Sec. 1324a)
22 is not a violation of law.

23 (3) It is a violation of Section 11135 of the Government Code
24 for a state or local governmental authority, agent, or person acting
25 on behalf of a state or local governmental authority, or a program
26 or activity that is funded directly or receives financial assistance
27 from the state, to discriminate against an individual because he or
28 she holds or presents a license issued pursuant to this ~~section~~.
29 *section, including by notifying another law enforcement agency*
30 *of the individual's identity or that the individual carries a license*
31 *issued under this section if a notification would not otherwise be*
32 *provided.*

33 (i) Driver's license information obtained by an employer shall
34 be treated as private and confidential, is exempt from disclosure
35 under the California Public Records Act (Chapter 3.5 (commencing
36 with Section 6250) of Division 7 of Title 1 of the Government
37 Code), and shall not be disclosed to any unauthorized person or
38 used for any purpose other than to establish identity and
39 authorization to drive.

1 (j) Information collected pursuant to this section is not a public
2 record and shall not be disclosed by the department, except as
3 ~~required by law.~~ *in response to a warrant issued by a state or*
4 *federal court in an individual criminal prosecution.*

5 (k) A license issued pursuant to this section shall not be used
6 ~~to consider as evidence or a basis to infer~~ an individual's
7 citizenship or immigration status ~~as a basis for an investigation,~~
8 ~~arrest, citation, or detention.~~ *for any purpose.*

9 (l) On or before January 1, 2018, the California Research Bureau
10 shall compile and submit to the Legislature and the Governor a
11 report of any violations of subdivisions (h) and (k). Information
12 pertaining to any specific individual shall not be provided in the
13 report.

14 (m) In addition to the fees required by Section 14900, a person
15 applying for an original license pursuant to this section may be
16 required to pay an additional fee determined by the department
17 that is sufficient to offset the reasonable administrative costs of
18 implementing the provisions of the act that added this section. If
19 this additional fee is assessed, it shall only apply until June 30,
20 2017.

21 (n) This section shall become operative on January 1, 2015, or
22 on the date that the director executes a declaration pursuant to
23 Section 12801.11, whichever is sooner.

24 (o) This section shall become inoperative on the effective date
25 of a final judicial determination made by any court of appellate
26 jurisdiction that any provision of the act that added this section,
27 or its application, either in whole or in part, is enjoined, found
28 unconstitutional, or held invalid for any reason. The department
29 shall post this information on its Internet Web site.

30 SEC. 4. The Legislature finds and declares that Section 1 of
31 this act, which adds Section 1798.785 of the Civil Code, imposes
32 a limitation on the public's right of access to the meetings of public
33 bodies or the writings of public officials and agencies within the
34 meaning of Section 3 of Article I of the California Constitution.
35 Pursuant to that constitutional provision, the Legislature makes
36 the following findings to demonstrate the interest protected by this
37 limitation and the need for protecting that interest:

38 This act strikes an appropriate balance between the public's right
39 to access information about the conduct of their government
40 agencies and the need to protect the personal information of private

1 individuals who participate in public programs or receive public
2 services.

3 SEC. 5. The Legislature finds and declares that Section 1 of
4 this act, which adds Section 1798.785 of the Civil Code, furthers,
5 within the meaning of paragraph (7) of subdivision (b) of Section
6 3 of Article I of the California Constitution, the purposes of that
7 constitutional section as it relates to the right of public access to
8 the meetings of local public bodies or the writings of local public
9 officials and local agencies. Pursuant to paragraph (7) of
10 subdivision (b) of Section 3 of Article I of the California
11 Constitution, the Legislature makes the following findings:

12 This act strikes an appropriate balance between the public's right
13 to access information about the conduct of their government
14 agencies and the need to protect the personal information of private
15 individuals who participate in public programs or receive public
16 services.

17 SEC. 6. No reimbursement is required by this act pursuant to
18 Section 6 of Article XIII B of the California Constitution because
19 the only costs that may be incurred by a local agency or school
20 district under this act would result from a legislative mandate that
21 is within the scope of paragraph (7) of subdivision (b) of Section
22 3 of Article I of the California Constitution.